

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

B E T W E E N:

PAUL MAGDER

Applicant
(Respondent in Appeal)

and

ROBERT FORD

Respondent
(Appellant)

COSTS SUBMISSIONS OF ROBERT FORD

1. Robert Ford seeks his costs of the Appeal to the Divisional Court, leave to Appeal, and his costs of the Application before Hackland RSJ.
2. For all proceedings Ford requests Fees on a partial indemnity basis, in an amount of \$107,070, Disbursements in the amount of \$8,974.00 and HST. A listing of the hours spent by counsel Alan Lenczner and Andrew Parley and students is at Schedule 1, Tab 1.
3. The Costs requested by Ford are entirely reasonable. Mr. Ruby, on behalf of Paul Magder, submitted a Bill of Costs to Hackland RSJ only for the Application in an amount of \$125,850.00 for fees, \$7,555.03 for disbursements and \$17,342.52 for HST, or an aggregate of \$150,746.55. The Ruby Costs Outline is at Schedule 2, Tab 2. Hackland RSJ did not assess the quantum of Costs as Leave to Appeal to the Divisional Court was granted expeditiously and an early Appeal was arranged by the Court.

4. Not only are the Costs being sought by Ford reasonable for the Application, the Leave to Appeal and the Appeal, they were within reasonable expectation of the applicant Paul Magder. Very expressly in his Costs Submissions Paul Magder stated: "The Applicant has borne the risk of an adverse costs award in bringing this Application."

5. Nor should this Court be concerned that Paul Magder will also have to indemnify his legal team. Paul Magder's Submissions to Hackland RSJ stated: "It is a matter of public record that the law firm of Ruby Shiller Chan Hasan, Barristers has acted as *pro bono* counsel to the Applicant in these proceedings."

6. Thus Paul Magder understood even before the inception of his Application that, if he was successful, his lawyers would receive costs from Ford which they would keep in their entirety. He also understood that, if he was unsuccessful, he would have to indemnify Rob Ford for his costs on a partial indemnity basis but not be required to pay his own lawyers.

THE LAW

7. It is well established that the Costs Regime in Ontario requires an unsuccessful party, applicant to partially indemnify a successful party respondent for fees and disbursements pursuant to a tariff:

4 In general, costs follow the event. The appellants were successful on the appeal, and, as a result, also on the lower court motion. The general principle when an appeal is allowed is that the order for costs below is set aside and the costs below and of the appeal are awarded to the successful appellant: see *Hunt v. TD Securities Inc.* (2003), 43 C.P.C. (5th) 211 (C.A.), at para. 2. Further where the substantive disposition is different from that of the decision under appeal, leave to appeal costs is not necessary: see *Dines v. Harvey A. Helliwell Investments Ltd.*, [1992] O.J. No. 2107

5 Despite the novelty of the issues that were decided, we see no reason to depart from the general principle. As the appeal was successful, the circumstances and considerations have changed. The appellants were entirely successful on the appeal with the result that they are now permitted to continue their actions against the new defendants. As such, they are entitled to their costs both of the motion below and of the appeal.

Reference: *St. Jean (Litigation guardian of) v. Cheung*, [2009] O.J. No. 27, (C.A.)

8. Rule 57.01 provides that, in exercising its discretion the Court may consider a number of factors including most importantly the following:

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceedings for which costs are being fixed.

9. Robert Ford respectfully requests Costs of the Application, Leave to Appeal and of the Appeal in the amount of \$107,070.00 for fees and of \$8,974.00 for disbursements and HST.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of February 2013.



Alan J. Lenczner, Q.C.



Andrew Parley

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Email: aparley@litigate.com

Lawyers for the Respondent (Appellant)

Fee Items	Persons	Hours Claimed	Partial Indemnity Rate
Reviewing 2 volume Application Record	Alan Lenczner	115.3	\$350.00
Reviewing and revising Affidavit of Ford			
Preparing for and Attending Cross Examination			
Reviewing Law			
Preparing for and Attending Pre-Hearing Motions			
Preparing Factum for Application			
Preparing for Application			
Reviewing Reasons for Judgment of Hackland RSJ			
Preparing materials for Leave to Appeal and Attending thereat			
Preparing Factum for Appeal			
Reviewing Responding Factum			
Preparing for Appeal			
Sub-Total			\$40,270.00
Counsel Fee		2 days	Application \$3,500.00 per day = \$7,000.00
		½ day	Leave to Appeal \$3,500.00 per day = \$1,750.00
		1 day	Appeal \$3,500.00 per day = \$3,500.00
			\$12,250.00
Total			<u>\$52,520.00</u>

Alan Lenczner called to the Bar of Ontario 1969

Fee Items	Persons	Hours Claimed	Partial Indemnity Rate
Reviewing 2 volume Application Record	Andrew Parley	151.4	\$250.00
Preparing Ford Affidavit			
Attending Cross-Examination			
Legal Research for Application			
Preparing for Application			
Reviewing Reasons for Judgment of Hackland RSJ			
Preparing Leave to Appeal Materials			
Preparing Factum for Appeal			
Reviewing Responding Factum			
Preparing for Appeal			
Sub-Total			\$37,850.00
Counsel fee		2 days	Application \$2,500 per day = \$5,000.00
		½	Leave to appeal \$2,500.00 per day = \$1,250.00
		1 day	Appeal \$2,500.00 per day = \$2,500.00
			\$8,750.00
Total			<u>\$46,600.00</u>

Andrew Parley called to the Bar of Ontario 2008

Fee Items	Persons	Hours Claimed	Partial Indemnity Rate
Review Application Materials	Richard Lizius		
Research law on municipal jurisdiction		45.3	\$60.00
Research law on Conflict of Interest Act			
Review Application Materials	Kate Pentney		
Preparing for Application			
Legal Research			
Prepare Briefs of Authorities		87.2	\$60.00
Preparing for Appeal			
		132.5	\$7,950.00
Total			<u>\$7,950.00</u>

Richard Lizius – Articling Student
 Kate Pentney - Articling Student

D I S B U R S E M E N T S

Description	Cost
Copies	\$59.00
Telephone Charges	\$6.48
Scanning	\$2.20
Courier Service	\$48.45
Copies	\$74.50
eCarswell On-line Research	\$103.50
On-Line Searches	\$177.60
Copying of CDs, USBs	\$20.00
Court Form fee	\$65.00
Notice of Appearance	\$102.00
Process Serving	\$156.50
Printing/Binding	\$270.40
Copies	\$1,702.75
Telephone Charges	\$32.88
Courier Service	\$222.69
Binding, Printing	\$2,098.05
eCarswell On-line Research	\$286.60
On-Line Searches	\$661.81
Copying of CDs, USBs	\$20.00
Court Form fee	\$65.00
Motion Record	\$127.00
Notice of Appeal	\$259.00

Perfecting of Appeal	\$201.00
Process Serving	\$597.00
Transcripts (non-taxable)	\$1,958.90
Taxi	\$16.81
<u>TOTAL</u>	<u>\$9,335.12</u>
<u>AMOUNT CLAIMED</u>	<u>\$8,974.00+ HST</u>

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ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

PAUL MAGDER

Applicant

- and -

ROBERT FORD

Respondent

APPLICANT'S COSTS OUTLINE

The Applicant provides the following outline of the costs:

Fees (as detailed below)

Partial Indemnity Basis \$125,850.00 plus HST

Disbursements (as detailed in the attached appendix) \$7,554.03 plus HST

The following points are made in support of the costs sought with reference to the factors set out in subrule 57.01(1):

- the amount claimed and the amount recovered in the proceeding

Not applicable.

- the complexity of the proceeding

The application required significant research on the applicable legislation and defences. Because the wording of the defences in the *Municipal Conflict of Interest Act* are somewhat vague, further research had to be completed on the legislative history, interpretation, and statutory interpretation of the *Act*.

The respondent's lengthy tenure on City Council meant that counsel had to sort through a large amount of materials relating to the respondent's previous conflicts of interests, both those he declared and those he did not declare, and the materials educating elected officials on their conflict of interest obligations.

- the importance of the issues

The issues in the instant application are of the utmost importance to our electoral system. The accountability of our elected officials and the integrity of government are at the core of the instant application.

- the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding

The respondent raised issues of jurisdiction and *vires* late in the proceedings, at the respondent's examination, which necessitated another round of research as well as a reply factum in response to the new issues raised.

Because the respondent contested the applicant's motion to examine the respondent in open court, two motions had to be brought to compel the respondent to testify at the hearing.

The respondent suggested in his sworn affidavit that City staff had an obligation to advise him of conflicts of interests. It was later conceded in the respondent's factum and during the hearing that staff were under no such obligation. Based on the affidavit, steps were taken to research the roles of the City Clerk and City Solicitor, including a freedom of information request to obtain job descriptions. A motion was also made to examine the City Solicitor and City Clerk, as well as to introduce a supplementary affidavit from a former councillor to respond to these assertions.

- whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution

No submissions.

- a party's denial or refusal to admit anything that should have been admitted

The respondent failed to recall many important facts during his out-of-court cross-examination. For example, the respondent failed to recall:

- whether he received any training or guidance on conflicts of interest when elected to council on four occasions;
- whether he had discussions with staff regarding the Integrity Commissioner's report when it appeared council's agenda for February 7, 2012 prior to the meeting; and
- why he previously declared a conflict of interest in a matter before council regarding a prior Code of Conduct complaint against him

- the experience of the party's lawyer

Clayton C. Ruby: Called to the Ontario Bar in 1969

Nader R. Hasan: Called to the Ontario Bar in 2007

Gerald J. Chan: Called to the Ontario Bar in 2007

Angela M. Chaisson: Called to Ontario Bar in 2012

- the hours spent, the rates sought for costs and the rate actually charged by the party's lawyer:

FEE ITEMS (e.g., pleadings, affidavits, cross-examinations, preparation, hearing, etc.)	PERSONS (identify the lawyers, students and law clerks who provided services in connection with each item together with their year of call, if applicable)	ACTUAL HOURS (specify the hours claimed for each person identified in column 2)	HOURS CLAIMED	PARTIAL INDEMNITY RATE (specify the rate being sought for each person identified in column 2)	ACTUAL RATE*
Conducting cross-examination; reviewing pleadings and facts; preparation for hearing, appear at pre-hearing conferences	Clayton C. Ruby	142.3	110	\$350.00	\$650.00
Drafting facts; conducting research; managing file and correspondence, drafting pleadings; preparation for hearing.	Nader R. Hasan	299.7	245	\$225.00	\$375.00
Appear at pre-hearing conference ; research; reviewed pleadings and facts	Gerald J. Chan	9.3	5	\$225.00	\$375.00
Draft pleadings; assist at cross-examinations; preparation for hearing; research	Angela M. Chaisson	182.8	110	\$100.00	\$225.00
Draft pleadings; assist at cross-examinations; preparation for hearing; research	Angela M. Chaisson (while Student-at-Law)	146.4	110	\$60.00	\$225.00
Counsel Fee	Clayton C. Ruby	2 days	2 days	\$3500.00/day	\$6500.00
Counsel Fee	Nader R. Hasan	2 days	2 days	\$2250/day	\$3750.00
Counsel Fee	Angela M. Chaisson	2 days	2 days	\$1000.00/day	\$2500.00

* Specify the rate being charged to the client for each person identified in column 2. If there is a contingency fee arrangement, state the rate that would have been charged absent such arrangement.

• any other matter relevant to the question of costs

There is a pro bono arrangement between counsel and the Applicant regarding the legal fees associated with the Application. The rates listed in column 5 are the rates that would have been charged absent such an arrangement.

LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

Date: December 21, 2012



Nader R. Hasan

DISBURSEMENTS APPENDIX

Mar-09-12	Notice of Application	\$181.00
	Transaction Levy: Application/Notice of App.	\$44.91
Mar-12-12	Parking, Mar.12/12*	\$6.75
Mar-13-12	Taxi, mar.12/12 (x2)*	\$29.00
	Donaldson Law Clerk Services Inc.	\$240.00
Mar-19-12	Motion	\$127.00
	Transaction Levy: Other	\$44.91
	Taxi (x2)*	\$25.00
	Taxi, Mar.21/12*	\$12.00
	Taxi, Mar.21/12*	\$15.50
	Mileage, Mar. 20/12, re: service*	\$14.57
Mar-23-12	Donaldson Law Clerk Services Inc.	\$258.75
	Print Three	\$100.50
Mar-30-12	Parking, Mar.23/12*	\$12.00
Apr-02-12	Fee re: Freedom of Information	\$5.00
Apr-13-12	Parking, Apr.2/12*	\$10.00
May-02-12	Parking, Apr.11/12*	\$10.00
May-03-12	Certified minutes of City Council	\$166.89
May-07-12	Grand & Toy	\$25.99
May-10-12	Certified minutes of City Council	\$57.08
	Certified minutes of City Council	\$119.38
	FOI request	\$5.00

May-11-12	Print Three	\$446.10
May-16-12	Councillor Handbook	\$162.72
	Donaldson Law Clerk Services Inc.	\$90.00
May-17-12	Certification and photocopying*	\$319.50
May-28-12	Parking, May 28/12*	\$5.00
	Photocopies, May 2012	\$102.40
Jun-01-12	Alex Machin, Law Clerk, May 9/12	\$50.00
	Alex Machin, Law Clerk, May 3/12	\$30.00
	Alex Machin, Law Clerk, May 17/12	\$40.00
	Alex Machin, Law Clerk, May 9/12	\$40.00
Jun-13-12	FOI Request*	\$400.00
Jun-19-12	Taxi, Jun. 14/12*	\$16.00
Jun-25-12	Donaldson Law Clerk Services Inc., Inv # 65062	\$80.00
Jun-29-12	Taxi, Jun. 18/12*	\$14.00
	Taxi, Jun. 18/12*	\$13.00
Jun-30-12	Photocopies, June 2012	\$251.00
Jul-16-12	FOI Request*	\$5.00
Jul-18-12	Victory Verbatim, transcripts	\$1,546.70
Jul-25-12	FOI Request, refund*	-\$169.00
Jul-26-12	Certification and photocopying*	\$31.14
Aug-03-12	Taxi, July 26/12*	\$12.00
Aug-09-12	Time Trek Courier, July 3/12	\$5.99
	Print Three, #214014	\$249.88
	Print City,	\$201.21
	Print City	\$601.01

Aug-10-12	The Printing House	\$203.70
Aug-15-12	Taxi, July 26/12*	\$12.00
Aug-16-12	Alex Machin, Law Clerk, July 26/12	\$30.00
Aug-17-12	Summons to witness*	\$53.00
	Summons to witness*	\$53.00
Aug-20-12	Photocopies, July 2012	\$446.25
	Research, June 2012	\$13.19
Aug-22-12	Research, July 2012	\$50.49
	City of Toronto, DVD*	\$40.00
Aug-23-12	Print City,	\$44.24
Aug-27-12	Donaldson Law Clerk Services Inc., Inv #65984	\$173.44
Aug-29-12	Photocopies, August 2012	\$311.00
Sep-04-12	Federal Express, July 31/12	\$28.84
Sep-05-12	Parking, Sept.5/12*	\$20.00
	Parking, Sept.6/12*	\$20.00
	Total	\$7,554.03
	HST	\$982.02
	Grand	
	Total	\$8,536.05